

REMARKS

Applicants submit this Second Supplemental Reply in response to the non-final Office Action mailed November 14, 2008. Pursuant to the Notice of Non-Compliant Amendment dated November 24, 2009, Applicants have amended the markings for adding words and deleting words in the claims to comply with 37 C.F.R. § 1.121(c).

Before this response, claims 38-74 were pending, of which claims 38 and 55 were independent. In this response, Applicants have amended claims 38-74, and added new dependent claims 75 and 76. Support for new dependent claims 75 and 76 may be found in the originally filed specification at, for example, page 10 lines 22-27. No new matter has been added. As a result, claims 38-76 are currently pending, of which claims 38 and 55 are independent.

In the non-final Office Action,² the Examiner took the following actions:

- (a) rejected claims 38-74 under 35 U.S.C. § 112, second paragraph for being indefinite;
- (b) rejected claim 74 under 35 U.S.C. § 101 for being directed to non-statutory subject matter;
- (c) rejected claims 38-50, 52-67, and 69-74 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2001/0001268 ("Menon") in view of European Patent No. 1304831 ("Korhonen"); and
- (d) rejected claims 51 and 68 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Korhonen and further in view of "JADE: Java Agent Development Framework" ("Bellifemine").

Applicants respectfully traverse the foregoing rejections for at least the following reasons.

² The Office Action contains a number of statements characterizing the Applicants' disclosure, including the claims, and the related art. Regardless of whether any such statement is specifically addressed herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 38-74 stand rejected under 35 U.S.C. § 112, second paragraph, for being indefinite. See Office Action, p. 2. In particular, the Examiner alleged that the phrase “capable of” in each of claims 38, 45-46, 55, 62-64, and 73-74 renders these claims indefinite; the phrase “can be” in each of claims 38 and 55 renders these claims indefinite; the phrase “being able to” in claim 38 renders this claim indefinite; and the phrase “some of” in each of claims 41 and 58 renders these claims indefinite. *Id.* Moreover, the Examiner rejected each of claims 38-74 as being indefinite for failing to provide sufficient antecedent basis for various terms appearing in each claim.

Applicants respectfully traverse these rejections. However, solely to advance prosecution, Applicants have amended claims 38, 41, 45-46, 55, 58, 62-64, and 73-74 to remove the phrases pointed out by the Examiner. In addition, Applicants have amended each of claims 38-74 to address the alleged antecedent issues pointed out by the Examiner. Accordingly, Applicants deem the 35 U.S.C. § 112, second paragraph, rejection overcome and respectfully request its withdrawal.

Rejection of Claim 74 Under 35 U.S.C. § 101

Claim 74 stands rejected under 35 U.S.C. § 101 for “lacking the proper form for a claim directed to computer/machine readable instructions.” Office Action, p. 20. In response, Applicants have amended claim 74 to be in the form suggested by the Examiner. More specifically, claim 74 has been amended to recite “[a] computer-readable medium storing a computer program product for execution on a processor, the computer program product comprising” Applicants therefore respectfully request the Examiner’s reconsideration and withdrawal of the 35 U.S.C. § 101 rejection of claim 74.

Rejection of Claims 38-50, 52-67, and 69-74 Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 38-50, 52-67, and 69-74 under 35

U.S.C. § 103(a) as being unpatentable over Menon in view of Korhonen. A *prima facie* case of obviousness has not been established.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See M.P.E.P. § 2142. In this application, a *prima facie* case of obviousness has not been established because the scope and content of the prior art have not been properly ascertained, see M.P.E.P. § 2141, and thus, a reason why the prior art would render obvious the claims has not been articulated.

Representative amended independent claim 38 recites, among other things, “a set of terminals, each terminal of said set of terminals housing at least one measuring agent” and “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of terminals . . . and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each terminal of said subset.” Applicants respectfully submit that neither Menon nor Korhonen teach or suggest at least these features of Applicants amended independent claim 38.

Menon generally discloses “a telecommunications system supporting wireless access that can handle both packet data and voice transmissions.” Menon, ¶ [0009]. In its disclosure of such a system, Menon appears to mention quality of service in three different circumstances.

First, Menon discloses that its telecommunication system comprises four sub-networks: a core packet data network, an Internet Protocol packet voice network, an Internet Protocol facsimile network, and an Operation Support System (OSS). See *id.* at ¶¶ [0051]-[0058]; see also Fig. 1; Fig. 5. Menon provides that “the core packet data network further comprises . . . an Internet Protocol network 40,” *id.* at ¶ [0053], that “is a managed IP network wherein resource

management and Quality of Service (QoS) aspects of the system 10 services are controlled,” *id.* at ¶ [0089].

Second, Menon discloses that “the private IP network 40 provides the Operation Support System 70 of the system 10 connectivity to the system 10 components.” *Id.* at ¶ [0090]. The OSS comprises “a Subscriber Management Platform (SMP) 75 and a Network Management System (NMS) 80.” Menon, ¶ [0058]. Menon further discloses that “the network management architecture [of the OSS, see Fig. 9]. . . is comprised of a Network Element Management Layer (NEML) 140, a Network Management Layer 130 (NML) and a Service Management Layer and (SML) and a Business Management Layer (BML) 120.” Menon, ¶ [0161]; see Fig. 9. The Service Management layer “comprise[s] a Subscriber Management Platform (SMP)” that supports “a subscriber management procedure.” *Id.* at ¶ [0169]. This subscriber management procedure “generates and supports network management to subscriber information including . . . Quality of Service (QoS) subscribed for, or otherwise assigned.” *Id.* at ¶ [0182].

Third, Menon discloses “a direct node management approach is used that allows management of any network node.” *Id.* at ¶ [0183]. As part of the direct node management approach, “[e]ach CPRO 25, WARP 32 and base station 30 and 101 in wireless access system 10 and 100 supports self-supervision functionality to detect failures due to [*inter alia*] . . . quality of service and environmental conditions.” *Id.* at ¶ [0226]. Once such a failure is detected, it is provided to “the system’s OMC 72 [operation management center], via hardware status failure reports.” *Id.*

None of these three disclosures concerning quality of service, nor any other portion of Menon, appears to teach or suggest “a set of terminals, each terminal of said set of terminals housing at least one measuring agent” and “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of terminals . . . and configuring, for executing said defined measuring campaign, at least one

measuring agent housed by each terminal of said subset,” as required by Applicants’ amended independent claim 38. The first and second of Menon’s disclosures relating to quality of service merely indicate that “resource management and Quality of Service (QoS) aspects of the system 10 services are controlled [in the IP network 40],” *id.* at ¶ [0089], and that the subscriber management procedure of the Operation Support System’s Subscriber Management Platform “generates and supports network management to subscriber information including . . . Quality of Service (QoS) subscribed for, or otherwise assigned.” *id.* at ¶ [0182]. Neither of these disclosures specifies how or where quality of service measurements are measured; they only specify that quality of service aspects of the system are controlled in the IP network or are managed by the Operation Support System, respectively.

Moreover, the last disclosure in Menon relating to quality of service does not teach or suggest the above-referenced elements of amended independent claim 38. Menon’s disclosure that “[e]ach CPRU 25, WARP 32 and base station 30 and 101 in wireless access system 10 and 100 supports self-supervision functionality to detect failures due to [*inter alia*] . . . quality of service and environmental conditions,” *id.* at ¶ [0226], does not indicate that quality of service conditions are directly measured by a CPRU 25. Instead, this portion of Menon merely discloses that a CPRU may detect whether it has experienced any hardware failures because of quality of service and environmental conditions. Moreover, Menon discloses that this functionality is a “self-supervision functionality to detect failures,” *id.*, rather than one that uses “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of terminals . . . and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each terminal of said subset,” as required by Applicants’ amended independent claim 38.

For at least the foregoing reasons, Applicants respectfully submit that Menon fails to teach or suggest the claimed “set of terminals, each terminal of said set of terminals housing at

least one measuring agent” and “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of terminals . . . and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each terminal of said subset,” as required by Applicants’ amended independent claim 38.

Korhonen does not cure the above-noted deficiencies of Menon. Korhonen discloses “a method and system for distributing, transferring and monitoring QoS [Quality of Service] data in a packet-switched mobile communication network.” Korhonen, ¶ [0001]. The system of Korhonen comprises “user equipment . . . , a radio access network . . . , a core network . . . , and terminal equipment.” *Id.* at ¶ [0019]. In this system, “QoS data obtained from the UMTS QoS components is transmitted to a monitoring agent MA,” where MAs exist in “the user equipment UE, in the RNC [of the radio access network], and in the SSGN . . . and GGSN [each of the core network].” *Id.* at ¶ [0021]. Importantly, “[t]he monitoring agent MA in a mobile station UE adds a QoS header field [to an IP packet transmitted from the UE to the other network components] according to the QoS wanted by the user” *Id.* at ¶ [0026]. The monitoring agents of the radio access network and the core network then add QoS values, if necessary, to the IP packet, and eventually “the packet provided with the updated QoS data [is received by] the mobile station UE.” *Id.* at ¶ [0028].

In other words, Korhonen only discloses that a user equipment’s monitoring agent may request quality of service parameters to be provided the radio access network or core network, instead of disclosing “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of terminals . . . and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each terminal of said subset,” as required by Applicants’ amended independent claim 38.

Thus, neither Menon nor Korhonen teaches or suggests the claimed “set of terminals, each terminal of said set of terminals housing at least one measuring agent” and “scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of terminals . . . and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each terminal of said subset,” as recited by amended independent claim 38 and as required by each of dependent claims 39-50, 52-54, and 72-74, and by new claim 75. Amended independent claim 55, although different in scope from amended independent claim 38, recites similar subject matter and is therefore allowable for at least the same reasons. Claims 56-67, 69-71, and new claim 76 each depend from amended independent claim 55 and should also be allowable at least due to their dependence on an allowable base claim. Applicants therefore respectfully request the withdrawal of the section 103 rejection of claims 38-50, 52-67, and 69-76.

Rejection of Claims 51 and 68 Under 35 U.S.C. § 103(a)

Applicants traverse the rejection of claims 51 and 68 under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Korhonen and in further view of Bellifemine. A *prima facie* case of obviousness has not been established because among other things, the Office Action has not properly ascertained the scope and content of the cited references as neither Menon, Korhonen, Bellifemine, nor their combination, teaches or suggests each and every feature of Applicants' claims.

The Examiner alleges that Bellifemine teaches measuring agents operating according to JADE technology. See Office Action, p. 45. Even assuming the Office Action's characterization of Bellifemine is correct, which Applicants do not concede, Bellifemine still does not teach or suggest “a set of terminals, each terminal of said set of terminals housing at least one measuring agent” and “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of terminals . . . and

configuring, for executing said defined measuring campaign, at least one measuring agent housed by each terminal of said subset," as required by amended independent claims 38 and 55, which Menon and Korhonen also fail to teach or suggest. Accordingly, the Office Action has not articulated a reason why the claims would be obvious to one of ordinary skill in the art and no *prima facie* case of obviousness has been established with respect to claims 51 and 68. Applicant therefore respectfully requests the withdrawal of the section 103 rejection of claims 51 and 68.

Conclusion

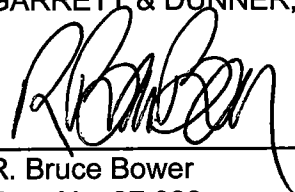
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 18, 2009

By: 
R. Bruce Bower
Reg. No. 37,099